recommends that the Commission prohibit all transfers of facilities from an incumbent LEC to its advanced services affiliate.

In the *NPRM*, the Commission tentatively concludes that any transfer of local loops from an incumbent LEC to an advanced services affiliate would make that affiliate an assign of the incumbent LEC, and therefore not subject to regulatory status as a competitive LEC.[39] Inasmuch as the incumbent LECs' local loops are the "lifeline" of advanced telecommunications services, Transwire vigorously supports this conclusion.[40] To promote fair competition in the advanced telecommunications market, the Commission must ensure that the network remains separate and apart from the advanced services affiliate.

The Commission also tentatively concluded that, subject to a "*de minimis* exception," a wholesale transfer of facilities used to provide advanced services, including, but not limited to DSLAMs and packet switches, would make an affiliate the assign of the incumbent LEC.[41] The Commission, however, proposes to adopt a *de minimis* exception for the transfer of such facilities.[42]

While Transwire generally supports, in theory, the adoption of a *de minimis* standard for the transfer of facilities to an advanced services affiliate, Transwire believes that the reality of

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[39] *See NPRM* at ¶ 107.

[40] Transwire also agrees with the Commission's tentative conclusion that if an incumbent sells or conveys central offices or other real estate in which equipment used to provide telecommunications services is located to an advanced services affiliate, that would make the affiliate an assign of the incumbent.

[41] *NPRM* at ¶106.

implementing the proposal may render it unworkable. For example, given their professed intent to offer xDSL technologies in the near future, it is highly probable that the incumbent LECs have already made significant investment in DSLAMs, packet switches, and the like.[43] While it is clear that a wholesale transfer of these facilities would not be a permitted transfer, Transwire believes it would be difficult to ascertain with any precision what level of transfer should be deemed *de minimis*. From Transwire's standpoint, any transfer to the advanced services affiliate would provide the affiliate with a competitive advantage over other competitors which were required to pay for the equipment necessary to provide service.

In the event that the Commission decides to allow transfers between the incumbent LEC and its affiliate, subject to the *de minimis* exception, Transwire recommends the following:

- Transfer restrictions should apply regardless of whether the facilities are installed or when the facilities were ordered.
- Incumbent LECs should be required to provide detailed documentation of any transfer of facilities, inclusive of the value of the facilities transferred.
- Audit requirements, similar to those set forth in section 272(c) of the 1996 Act, should apply to the advanced services affiliate. Transwire suggests that the audit be conducted within the six month period following the creation of an affiliate, to allow for an analysis of any initial transfer to the advanced services affiliate.
- In the event of a transfer to an affiliate, to the extent there are space limitations on the incumbent LEC's premises, either in the central office or remote terminal, an affiliate may not leave the equipment in its current location.

(footnote continued from previous page)

[42] *Id.* at ¶108.

[43] *See Petition of Bell Atlantic for Relief from Barriers to Deployment of Advanced Telecommunications Services*, CC Docket No. 98-11 at Attachment 2, pp. 12-13 (filed January 26, 1998) (referring to Bell Atlantic Press Release, *Bell Atlantic to Offer ADSL-Based Service Starting in Mid-1998*, May 19, 1998).

- The principles underlying transfers of facilities should apply with equal force to transfers of an incumbent LECs' non-facilities assets (such as customer accounts, employees, and brand names).

- The Commission must make clear that the network disclosure requirements in section 251(c)(5) apply to the transfer of incumbent LECs facilities to the advanced services affiliate.[44]

III. MEASURES TO PROMOTE COMPETITION IN THE LOCAL MARKET

A. Collocation Requirement

Pursuant to section 251(c)(6) of the Communications Act, incumbent LECs are required to offer, "on rates, terms and conditions that are just, reasonable, and nondiscriminatory," physical or virtual collocation to carriers desiring to locate interstate special access and switched transport facilities at LEC premises.[45] Sections 51.321 and 51.323 of the Commission's rules, implement these collocation requirements.[46] In particular, section 51.321 requires incumbent LECs to provide "any technically feasible method of obtaining interconnection or access to unbundled network elements" on request by a telecommunications carrier.[47] While the rules also require incumbent LECs to prove to state commissions that the requested method of obtaining interconnection or access to unbundled network elements ("UNEs") is not technically feasible in

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[44] Because section 251(c)(5) does not expressly contemplate an affiliate transaction between an incumbent LEC and its advanced services affiliate, Transwire believes that the Commission should clarify that the statutory language requiring the incumbent LECs to provide notice "of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks" encompasses the need to notify competitive providers of a transfer of the incumbent LECs' facilities to its advanced services affiliate.

[45] 47 U.S.C. § 251(c) (6) (1996).

[46] 47 C.F.R. §§ 51.321 and 51.323 (1998).

order to deny a request, several parties, including ALTS and the United States Department of Commerce, National Telecommunications and Information Administration ("NTIA"), contend that further requirements are needed. Transwire supports their contentions.

1. The Commission should adopt a "rebuttable presumption" approach with respect to technical feasibility.

ALTS argues that although incumbent LECs offer physical collocation, competitive entry into the data services market is impeded by restrictions on the type of equipment that can be placed in collocation spaces, delays in providing space, and excessive rates and onerous terms and conditions for collocation.[48] NTIA, voicing similar concerns with such costs and delays, suggests that the Commission adopt a rebuttable presumption approach to "technical feasibility."[49] Specifically, NTIA recommends that in those instances where a state commission has ordered an incumbent LEC to offer a particular collocation arrangement, or where an incumbent LEC has voluntarily offered such an arrangement, it should be presumed "technically feasible" for incumbent LECs in any other part of the country to offer that same arrangement.[50] Transwire shares the concerns of ALTS and NTIA and urges the Commission to adopt NTIA's

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[47] 47 C.F.R. § 51.321 (1998).

[48] *See ALTS Petition* at i, 21.

[49] Letter from Larry Irving, Assistant Secretary for Communications and Information, Department of Commerce, to William E. Kennard, Chairman, Federal Communications Commission, CC Docket Nos. 98-91, 98-32, 98-26, 98-11, at 15 (filed July 17, 1998) ("*NTIA Comments*").

[50] *Id.*

rebuttable presumption approach as a means to address the incumbent LECs' ability to delay and restrict the collocation needs of competitive carriers.

2. The Commission should adopt specific and detailed national rules for collocation to prevent incumbent LECs from engaging in discriminatory and anticompetitive practices.

The Commission has adopted minimum requirements for nondiscriminatory collocation addressing, *inter alia*, space allocation and exhaustion, types of equipment to be collocated and available LEC premises for collocation.[51] In Transwire's view, the Commission has concluded correctly that specific rules outlining minimum requirements for nondiscriminatory collocation arrangements will implement the pro-competitive provisions of the 1996 Act and remove barriers to entry.[52] The Commission also has concluded that state commissions may adopt additional collocation requirements consistent with the 1996 Act and the Commission's rules. Given the states' key role in problem solving and implementing policies to facilitate efficient and effective competition in an evolving marketplace, such regulatory flexibility is fundamental. However, as discussed below, the Commission's minimum requirements do not go far enough. Rather, the Commission must adopt specific and detailed national rules for collocation to prevent incumbent LECs from engaging in discriminatory and anticompetitive practices.

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[51] *See NPRM* at ¶ 122.

[52] See Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 15783, ¶ 558, (1996) ("*Local Competition Order*"), *aff'd in part and vacated in part sub nom.*, Iowa Utils. Bd. v. FCC, 120 F.3d 753 (8th Cir. 1997), *cert. granted*, 118 S.Ct. 879 (1998) (Nos. 97-826 *et al.*).

Transwire agrees with the Commission's tentative conclusion that while minimum standards are useful, national standards are necessary to ensure removal of barriers to entry and speed deployment of advanced services. In particular, Transwire advocates revisions to the Commission's rules to include, among other things:

- Cageless collocation;
- Cage sharing;
- Cross connection to cages of other collocated carriers; and
- Elimination of equipment limitations.

In Transwire's opinion, competitive carriers should be able to pursue any form of interconnection, including copper termination at the MDF, and integrated solutions whereby the line card is integrated directly into the switch. It is important to ensure that competitive LECs are provided with a number of collocation options and not restricted to any particular collocation arrangement. In short, any just, reasonable and nondiscriminatory means of interconnection and access to UNEs must be allowed in order to assure competitive carriers such as Transwire guaranteed access to the packet network through copper connection in order to provide advanced services. Furthermore, to the extent that states have adopted (or may adopt in the future) collocation requirements that go beyond the minimum requirements established by the Commission, the Commission should encourage such regulatory latitude. However, it is critical that state commissions, in certifying advanced service providers on an intrastate basis, create regulatory conditions that, *at a minimum*, meet the Commission's proposed national standards.

3. The Commission's rules must be revised in a technically neutral manner to remove restrictions on collocating equipment with switching functionality.

Currently, Commission rules and policies only require incumbent LECs to provide interconnection for facilities and equipment for "the transmission and routing of telephone exchange service and exchange access" as well as access to UNEs "for the provision of a telecommunications service."[53] Indeed, section 51.323(c) of the Commission's rules exempts incumbent LECs from offering "collocation of switching equipment or equipment used to provide enhanced services."[54] Nevertheless, in its *Local Competition Order*, the Commission specifically reserved the right to reexamine this limitation at a later date in furtherance of the pro-competitive goals of the 1996 Act.[55]

As several petitioners have demonstrated, this limitation now threatens the development and use of more efficient, integrated telecommunications equipment--equipment that typically performs multiple functions and broadens the scope of potential service offerings.[56] A restriction on the type of equipment competing carriers may collocate will certainly arrest the growth of efficient network design and undoubtedly encourage incumbent LECs to delay the entry of competitive carriers to the advanced services market. Recognizing these concerns, the Commission has tentatively concluded that it will require incumbent LECs to allow competitive

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[53] 47 U.S.C. §§ 251(c)(2)(A) and (3) (1996); *See also Local Competition Order*, 11 FCC Rcd at 15795, ¶ 581.

[54] 47 C.F.R. § 51.323(c) (1998).

[55] *See Local Competition Order*, 11 FCC Rcd at 15795, ¶ 581.

[56] *See, e.g., NTIA Comments* at 15; *Covad Comments* at 16-17.

LECs to collocate equipment to the same extent the incumbents allow their advanced services affiliate to do so.[57] In Transwire's opinion, such a requirement does not directly address the limitations imposed by section 51.323(c).[58] Transwire instead proposes that any collocation equipment rule address the certainty that restrictions on placing switching equipment in collocation spaces will prevent new entrants from taking advantage of more cost efficient integrated equipment and delay competitive entry. In this regard, Bellcore studies identify a 60 percent annual operations cost savings for an integrated line card approach such as that used in CDM technology. (See Exhibit B).

Notably, because the incumbent LEC can integrate the switch and xDSL line cards, competitive LECs are at a great competitive disadvantage if collocation rules exclude the possibility of integrated technologies. Accordingly, Transwire urges the Commission to adopt a national standard to allow carriers, whether new entrants or advanced service affiliates, to collocate equipment that includes switching functionality.

With regard to whether the Commission should differentiate among technologies by, for example, extending collocation only to packet-switching or circuit-switching equipment or to equipment that performs both switching and other functions, as discussed above, Transwire advocates collocation requirements that are technologically neutral. As the Commission has stated, it is often difficult to differentiate between switching and multiplexing equipment as

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[57] *See NPRM* at ¶ 129.

[58] 47 C.F.R. § 51.323©

functions are often blurred.[59] Accordingly, as the limitations imposed by section 51.323(c) are clearly inconsistent with the use of efficient integrated technology and the pro-competitive goals of the Act, the Commission should revise its rules to reflect the economic efficiency of using integrated equipment for the provision of advanced services.

4. The Commission should adopt rules which facilitate the provisioning of collocation space to competitive LECs in a timely manner and guard against the incumbent LECs' ability to routinely claim "lack of space."

The Commission has acknowledged several commenters' concerns regarding limited or non-existent collocation space.[60] Transwire agrees with these commenters that a solution to the allocation of space issue must address not only alternatives to physical collocation cages, but also safeguards to prevent incumbent LECs from imposing unnecessary costs and delays on competitive carriers for space and construction of collocation cages. As NTIA has indicated, even assuming the availability of collocation space, it is typically the competitive carrier that bears the cost of constructing collocation cages--a process that "can take several months and can entail one-time capital costs in the range of $30,000-100,000."[61]

In response to such concerns, the Commission has tentatively concluded that it should require incumbent LECs to offer alternative collocation arrangements to incumbent LEC

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[59] *See Local Competition Order*, 11 FCC Rcd at 15795, ¶ 581.

[60] *See NPRM* at ¶ 136.

[61] *NTIA Comments* at 10. NTIA also discloses that "the absence of collocation space for competitors in an incumbent LEC office does not necessarily prevent the incumbent LEC from installing its own DSL equipment in that office." *Id.* n.25 (citations omitted).

affiliates and new entrants in the advanced services market.[62] Such arrangements would include shared collocation, collocation cages of any size, and cageless collocation.[63] Transwire strongly supports the Commission's efforts to formulate alternative collocation arrangements and urges the Commission to adopt its proposed requirements. In addition, the Commission should require incumbent LECs to remove obsolete equipment and non-critical offices in central offices to increase the amount of space available for collocation.[64]

In the context of alternative collocation arrangements, the Commission requests that parties identify safeguards or other measures to resolve the issues of security and access to incumbent LECs' networks. While security is certainly a consideration and of concern to both incumbent LECs as well as competitive carriers, Transwire urges the Commission not to allow incumbent LECs to use these concerns as a means to prevent, delay, or otherwise impede competition. For example, in Transwire's opinion, requiring escorts for competitive LEC technicians would only delay the servicing of equipment and consequently the deployment of advanced services to the customer. A more reasonable and efficient safeguard might be requiring competitive LEC technicians to maintain security clearances. Concealed security cameras or badges with computerized tracking systems can provide additional security measures.

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[62] *See NPRM* at ¶ 37.

[63] *See id.* at ¶ 137.

[64] Transwire submits that the importance of access to physical collocation arrangements is underscored by the fact that virtual collocation of advanced telecommunications services such as ADSL is essentially meaningless due to the lack of standards associated with such technology. *See* supra at II.B.2.

However, in the interest of consistency and efficiency, the Commission should require that security measures be adopted by way of a national standard for all central offices rather than permitting varying standards by central office.

Regarding what measures may be available to reduce the cost of physical collocation arrangements, Transwire generally supports the idea of allotting only the "percentage of use" cost of conditioning the collocation space to the competing provider, regardless of whether the remaining space is vacant, and allowing smaller competing providers to pay on an installment basis.[65] Requiring one party to pay all up-front space preparation charges is both unreasonable and unnecessary and may deter new entrants to the advanced services market. Alternatively, adopting the "percentage of use" cost basis and small business installment plan as a national standard would encourage new entrants and assist competitive carriers in further reducing costs. Such a national standard would simplify the implementation and enforcement of the requirements of sections 251 and 271 of the Act.

Finally, the Commission must address the entry barrier posed by delays between the ordering and provisioning of collocation space. The Commission has correctly determined that regulations to shorten collocation ordering intervals must be implemented.[66] In most, if not all instances, incumbent LECs are cognizant of space availability and pricing. Therefore, requests for such information should be forthcoming within twenty-four hours from the time the request is made. The space should then be provided within a reasonable time thereafter. In any event, the

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[65] *See NPRM* at ¶ 143.

[66] *See id.* at ¶ 144.

Commission should set specific intervals by which time the incumbent LEC can be expected to provide collocation information and space.

With regard to what should be done in the event an incumbent LEC fails to meet a specified deadline, Transwire believes the burden should rest on the incumbent LEC to demonstrate why the specified time frame is unreasonable. When such a demonstration cannot be made, or when requests for information are not timely honored, the Commission should address competitive LECs' complaints consistent with the Commission's *Report and Order* establishing procedures to be followed when formal complaints are filed against common carriers.[67]

In its *Rocket Docket*, the Commission adopted procedures necessary for the review and resolution of complaints against common carriers within certain statutory deadlines set forth in the 1996 Act. As the Commission acknowledged in that proceeding, "[p]rompt and effective enforcement of the Act and the Commission's rules is crucial to attaining the 1996 Act's goals of full and fair competition in all telecommunications markets."[68] Similarly, the Commission's goal of promoting "innovation and investment . . . to stimulate competition for all services, including advanced services"[69] can only be met with the implementation of formal complaint rules. In order to achieve the Commission's stated objectives, competitive carriers must be given a forum

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[67] *See In the Matter of Implementation of the Telecommunications Act of 1996, Amendment of Rules Governing Procedures to Be Followed When Formal Complaints Are Filed Against Common Carriers*, 12 FCC Rcd 22497(released November 25, 1997) ("*Rocket Docket*").

[68] *Rocket Docket*, 12 FCC Rcd at 22499, ¶ 1.

[69] *NPRM* at ¶ 1.

for prompt resolution of their complaints concerning collocation arrangements and the ordering and provisioning of collocation space. A swift and effective framework for complaint resolution should likewise extend to the Commission's proposed local loop and resale requirements.

B. Local Loop Requirements

Transwire supports the Commission's determination that requires incumbent LECs to provide xDSL-compatible loops to requesting carriers.[70] However, as a provider of advanced services via CDM technology, Transwire shares the Commission's concern that such service providers may not have adequate access to the "last mile" for the provision of their various service offerings. Recognizing the critical need for competitive carriers to have access to the copper infrastructure for the provision of advanced services, the Commission has identified the local loop as "a network element that incumbent LECs must unbundle 'at any technically feasible point'" and has "defined the local loop to include 'two-wire and four-wire loops that are conditioned to transmit the digital signals needed to provide services such as ISDN, ADSL, HDSL, and DS1-level signals.'"[71] In addition, the Commission has concluded that when specified, incumbent LECs must provide carriers with loops that are free of loading coils, bridged taps, and other electronic impedances.[72] As discussed more fully below, Transwire supports the Commission's proposals and urges the swift adoption of these measures to ensure the viability of technologies such as CDM and xDSL for the provision of advanced services.

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[70] *See id.* at ¶ 151.

[71] *Id.* at ¶ 152 (citing *Local Competition Order*, 11 FCC Rcd at 15689-91, ¶¶ 377-79).

1. The Commission must adopt national standards to ensure access to the local loops at any technically feasible point and to preserve the existing copper infrastructure.

In Transwire's opinion, the issue of access to the local loop is critical if the rapid deployment of advanced telecommunications capability and services is to be achieved. In particular, in order for Transwire to provide its customers with local and long-distance telephone services and reliable high-speed access to the Internet, corporate "intranets" and other value-added services using its CDM technology, it must have unencumbered access to the existing copper wire telephone infrastructure. Specifically, CDM technology, unlike dial-up modems, take advantage of frequency spectrum above the voice band. Since CDM technology uses frequency spectrum above the voice band, the loops to which the modems are connected must be free of devices that will choke the higher frequencies. While the technology is designed to work on virtually any non-loaded cable pair, the insertion of devices such as loading coils or isolation coils adversely impacts the higher frequency and interferes with the capability.

The Commission must therefore ensure that the existing copper wire infrastructure, a vital resource for the provision of advanced services through the use of CDM and other copper-based technologies, is preserved and protected. In this regard, incumbent LECs should not be permitted to take any actions that result in rendering the copper useless.

Moreover, the Commission should ensure that to the extent that incumbent LECs disenfranchise copper facilities, for example, through the deployment of fiber throughout their network, requesting carriers should have the right, if technically feasible, to obtain access in a

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[72] *See id.*

timely manner to the disenfranchised copper. Competitors seeking access to the disenfranchised copper should not be required to engage in lengthy negotiations to obtain such access.

In short, the need to establish national standards with respect to the regulation of local loops goes beyond facilitating entry into the advanced services market or encouraging its rapid deployment. Rather, adopting national standards to require incumbent LECs to preserve the copper infrastructure as a resource and to simplify access to disenfranchised copper facilities is critical to the very feasibility of deploying advanced telecommunications capability to all Americans.[73]

2. The Commission must assure nondiscriminatory access to OSS systems for loop ordering and provisioning.

In response to the Commission's request for comments concerning its OSS rules, Transwire maintains that current OSS rules are inadequate to ensure that competitive LECs have access to necessary detailed information regarding loops. As the Commission has correctly assessed, competitors must have sufficient data to enable them to determine whether loops are compatible with their particular technology and capable of supporting the installation of technology specific equipment.[74]

Currently, competitive carriers generally have no information regarding outside plant and equipment while incumbent LECs have such information at their disposal. Incumbent LECs also typically have electronic databases to which competitive LECs are not privy. Such unequal

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[73] *Local Competition Order*, 11 FCC Rcd at 15692, ¶ 382.

[74] *See NPRM* at ¶ 157.

access, the Commission rightly has determined, represents "significant potential barriers to entry."[75] Accordingly, Transwire urges the Commission to require that, as loop information becomes available, incumbent LECs should immediately share such information with new entrants. In particular, incumbent LECs should be required to give competitive carriers a Design Layout Report ("DLR") for each unbundled network element in the pre-ordering process, detailing how their system is routed. The DLR will enable competitive LECs to make an independent determination, *prior to ordering and implementation*, whether the system layout is acceptable or not. In this manner, competitive LECs will, for instance, be able to determine whether a given loop is capable of supporting their service. Such absolute access to OSS is critical to ensuring competition in the advanced telecommunications services market and the widespread provisioning of advanced telecommunications services to end users.

3. To address those technologies which may result in interference, the Commission should adopt national standards on spectrum management.

In the context of loop spectrum management, the Commission seeks guidance concerning how to address potential interference resulting from the provision of advanced telecommunications capability by way of varied signal formats on copper pairs in the same bundle.[76] In this regard, the Commission must be mindful that all technologies are not created equal. In Transwire's experience, the use of existing unencumbered copper wire for the provision of advanced capability and services using CDM technology will not cause any

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[75] *Local Competition Order*, 11 FCC Rcd at 15763, ¶ 516.

[76] *See NPRM* at ¶ 159.

interference with other services. Specifically, CDM technology is "loop friendly" with existing and future services in that it is spectrally compatible with the T1.413 PSD (Power Spectral Density) mask. Because the technology is designed to a tighter mask than ADSL and other xDSL services, it does not interfere with itself or other DSL services. Furthermore, because CDM technology is "loop friendly," it requires only the unbundled local loop and does not require any special loop conditioning. Traditional xDSL technology, on the other hand, may cause interference problems.

Interference standards are therefore necessary to regulate those technologies that do cause interference. Nevertheless, as none currently exist, Transwire supports the adoption of national standards on spectrum management to address actual loop modulation. To date, standards typically have been a function of a particular manufacturer's specifications. Nevertheless, the Commission should impose standards to specify what can and cannot go over loops, while recognizing that there is no single answer to spectrum management.

The burden should be on the incumbent LECs to prove that a particular technology causes interference. Transwire proposes a test similar to that proposed by the Commission with respect to sub-loop unbundling and collocation at remote terminals: incumbent LECs must permit a technology over its loops unless it can demonstrate that such technology causes interference. This standard will encourage technological innovation and speed the deployment of advanced services.

4. The Commission should adopt uniform standards for attachment of electronic equipment at the central office end of a loop.

Transwire strongly supports the Commission's tentative determination that uniform national standards for attachment of electronic equipment at the central office end of a loop

should be implemented and applicable to both new entrants and incumbent LECs. Allowing incumbent LECs to continue to set their own requirements for central office equipment will only enable delays, increase costs, and assure inconsistency and disorder. Accordingly, the certification process should be taken out of the hands of incumbent LECs and instead be regulated by a set of national standards.

5. The Commission's interpretation of a loop must be sufficiently broad to encompass unencumbered loops as well as "conditioned loops."

The Commission seeks comment on the definition of "loop" to ensure that competitive LECs have access to the loop functionalities they need to offer advanced services.[77] Because different technologies can provide advanced services over loops of different specifications, the Commission should ensure access to any loop that is sufficient to support a given technology, subject to interference constraints.[78] Interference constraints, rather than the incumbent LECs, should be the sole determinant of what services can be offered over copper loops. Requesting carriers should be allowed to purchase the lowest cost functional loop available for a given technology.

Moreover, the Commission must ensure access to "raw" copper loops at the cost applicable to such loops. For example, CDM technology works well over unconditioned loops – that is, loops that are not "qualified" or "conditioned" to meet more stringent requirements. The deployment of CDM technology should not be impeded by requiring excess conditioning and

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[77] *See NPRM* at ¶164.

qualification of loops. Transwire submits that its position will result in lower costs, more rapid deployment, and ultimately a wider availability of advanced telecommunications services.

6. The Commission must ensure that the requirements it adopts pertaining to sub-loop unbundling and collocation at remote terminals are enforced even-handedly.

The Commission tentatively concludes that incumbent LECs must provide sub-loop unbundling and permit competitive LECs to collocate at remote terminals, unless the incumbent LEC can demonstrate: (i) sub-loop unbundling is not "technically feasible" or (ii) there is insufficient space at the remote terminal to accommodate the requesting carrier.[79] As the Commission correctly points out, the use of sub-loop elements and access to the remote terminal may be the only means by which competitive LECs can provide advanced services for those end-users whose connection to the central office is currently provided via digital loop carrier ("DLC") systems.[80] Transwire therefore supports the Commission's tentative conclusion requiring incumbent LECs to provide sub-loop unbundling and collocation at remote terminals.

The Commission should be sensitive, however, to the ability of the incumbent LECs to raise frivolous arguments to circumvent their obligations to provide sub-loop unbundling and collocation at remote terminals in the same manner that they have raised claims with respect to unbundling network elements and collocation at end offices. Accordingly, the Commission

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[78] In Transwire's view, such a definition should include the following elements: DC continuity, no load coils, POTS supportive, and the restriction of interferors in the same binder group.

[79] *Id.* at ¶174.

[80] *See id.*

should be wary of unfounded claims of technical infeasibility and insufficient space associated with requests for sub-loop unbundling and collocation at remote terminals. For these reasons, Transwire recommends that the Commission extend the competitive safeguards applicable to physical collocation and access to unbundled elements, as discussed *supra*,[81] to the incumbent LECs' provisioning of sub-loop unbundling and collocation at remote terminals.

In general, the Commission should adopt a "rebuttable presumption" of technical feasibility and require the incumbent LECs to affirmatively demonstrate to requesting carriers a lack of space at the remote terminal. In addition, an incumbent LEC should not be able to reserve collocation space at the remote terminal for their own use or their advanced services affiliates to the exclusion of other requesting carriers. Moreover, given the critical nature of collocation at remote terminals to the provision of advanced services, if sub-loop unbundling proves technically infeasible or there is insufficient space at the remote terminal, the incumbent LEC should be obligated to provide an alternative unbundling method at no greater cost to the competitive LEC.

Given that each competitive LEC has its own business strategy and unique reasons for obtaining loop access in a particular manner or at a particular location, a competitive LEC must be able to request any "technically feasible" method of unbundling a DLC-loop. Any impediments to the competitive LECs' ability to unbundle sub-loops or collocate at remote terminals would have a detrimental effect on the deployment of advanced telecommunications capability.

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[81] *See supra* at III.A.

IV. RESALE OBLIGATIONS UNDER SECTION 251(c)(4)

1. The resale obligations of section 251(c)(4) should attach to all advanced services marketed by incumbent LECs generally to residential or business users or to Internet service providers, regardless of whether such services are classified as telephone exchange service or exchange access.

Transwire agrees with the Commission's *Order* and supports its conclusion that the dichotomy drawn between telecommunications services and exchange access services in the *Local Competition Order*[82] is inapt in the advanced services context.[83] Advanced services and the components that facilitate any advanced services offering, as ultimately deployed in the marketplace, must fall within the requirements of section 251(c)(4) of the Act[84] in order to ensure that the pro-competitive goals of the Act[85] are realized in the marketplace regardless of whether such services or components are classified as telephone exchange or exchange access services.

While, as a general matter, exchange access services are "predominantly offered to, and taken by, interexchange carriers ("IXCs"), not end users,"[86] nothing in incumbent LEC access

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[82] *Local Competition Order*, 11 FCC Rcd at 15934, ¶ 873.

[83] *NPRM* at ¶ 30.

[84] 47 U.S.C. § 251(c)(4) (1996). This provision imposes upon "incumbent local exchange carriers," as that term is defined in § 251(h), 47 U.S.C. § 251(h) (1996), the "duty . . . to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers . . .." 47 U.S.C. § 251(c)(4)(A) (1996).

[85] The Telecommunications Act of 1996 is entitled "[a]n Act to promote competition and reduce regulation on order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies." Pub. L. No. 104-104, 110 Stat. 56 (1996).

[86] *Local Competition Order*, 11 FCC Rcd at 15935, ¶874.

tariffs limits such offerings to other telecommunications carriers.[87] Indeed, certain end users already avail themselves of exchange access services offered by the incumbent LEC.[88] However, Transwire recognizes, and the Commission made clear in its *Local Competition Order*,[89] the "essential nature" of exchange access services is that of an "input component to [an] IXC's own retail services."[90] Accordingly, in most circumstances, Transwire agrees that exchange access services fall outside the "core category of retail services" contemplated by section 251(c)(4).[91]

Nevertheless, as technology evolves, the lines are continually blurring and making formerly significant distinctions virtually meaningless. Continued rigid adherence to such distinctions has significant potential to stifle development, retard deployment, and impede competition in the advanced services context in particular. Therefore, Transwire encourages the Commission to adopt its tentative conclusion that advanced services marketed by incumbent LECs to residential or business users or to Internet service providers should be subject to the resale obligations contained in section 251(c)(4) without regard to their classification as telephone exchange service or exchange access.[92]

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[87] *Id.* at 15934-35, ¶873.

[88] *Id.* (describing end user purchase of "special access, Feature Group A, and certain Feature Group D elements for large private networks") (footnotes omitted).

[89] *Id.* at 15934 ¶874.

[90] *Id.*

[91] *NPRM* at ¶ 189.

[92] *Id.*

V. LIMITED INTERLATA RELIEF

1. The Commission should maintain LATA restrictions imposed on the regional Bell Operating Companies.

Transwire urges the Commission not to grant interLATA relief to allow BOCs to carry packet-switched traffic across current LATA boundaries for the purpose of providing end users with high-speed connections to nearby Internet network access points ("NAPs"). Such relief should not be considered a LATA "modification" as allowed by section 3(25) of the 1996 Act.[93] In order words, as a matter of both law and policy, the LATA modification process contemplated by section 3(25) must not be permitted to undercut the explicit statutory scheme allowing BOC entry into the interLATA market, including advanced telecommunications services.[94]

The Act is quite clear about the manner in which the BOCs may seek authority to enter the in-region interLATA services market.[95] In particular, section 271 sets out a detailed and specific procedure by which the Commission must evaluate a request for authority to enter either the interLATA telecommunications or information service markets and further obligates the Commission to monitor a BOC's continuing compliance with those competitive checklist requirements.[96] Thus, Congress has made its position quite clear: compliance with the competitive mandates of the 1996 Act and section 271 are necessary prerequisites for the

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[93] 47 U.S.C. § 153(25) (1996).

[94] *MCI v. AT&T*, 512 U.S. 218, 225 (1994) (use of the word "modify" in the Communications Act of 1934, as amended by 47 U.S.C. § 151 *et seq.*, means "to change moderately or in minor fashion").

[95] 47 U.S.C. § 271(c) (1996).

regional BOCs to enter the interLATA advanced telecommunications services market.[97] Congress further expressed this mandate by specifically foreclosing any Commission action that veers from the express terms of section 271: "LIMITATION ON COMMISSION—The Commission may not, by rule *or otherwise*, limit or extend the terms used in the competitive checklist . . . ."[98]

As a matter of law, the proposal flatly contradicts the 1996 Act. InterLATA relief that permits BOCs to function as a substitute for other advanced telecommunications service providers "effectively eviscerate[s] section 271 and circumvent[s] the pro-competitive incentives for opening the local market to competition that Congress sought to achieve in enacting section 271 of the Act."[99] Section 271(a) of the Act expressly prohibits the BOCs from competing against interLATA information and telecommunications providers until such time as the BOC demonstrates compliance with the express terms of the statute.[100] Section 271 simply does not empower the Commission to upend Congress' deliberated statutory scheme by weighing it against a perceived need for BOC interLATA access to Internet NAPs. By clear and

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[96] 47 U.S.C. § 271(d) (1996).

[97] 47 U.S.C. § 271(c) (1996). While the Act allows the BOCs to provide "incidental interLATA services," as that term is defined in § 271(g), 47 U.S.C. §271(g) (1996), it also states that subsection (g) must be narrowly construed. 47 U.S.C. § 271(h) (1996).

[98] 47 U.S.C. § 271(d)(4) (1996) (emphasis added).

[99] *NPRM* at ¶82.

unequivocal terms, section 271 prevents the Commission from finding that a waiver, or modification, of LATA restrictions serves the public interest.

In addition to section 271, other statutory provisions reinforce that Congress meant for the Commission to strictly enforce, and not trade away, the interLATA restrictions. For example, section 10(d) of the Act forbids the Commission from any act of forbearance from section 271 "until it determines that those [section 271] *requirements have been fully implemented.*"[101] The general goals of Section 706 for reasonable and timely deployment of advanced telecommunications services do not obviate the Commission's primary role of implementing the will of Congress as expressed in the statute. Indeed, the Commission has explained that section 706 was "adopted contemporaneously with" the section 10 proscription and that "Congress was well aware of the explicit exclusions of our forbearance authority in section 10(d)."[102]

With respect to the Commission's concern about the BOCs' ability to provide advanced telecommunications services to school districts that cross LATA boundaries,[103] Congress considered and directly addressed the issue with an express and *limited* "incidental interLATA services" exception which allows a BOC to provide Internet services to "elementary and

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[100] 47 U.S.C. § 271(a) (1996), which provides: "Neither a Bell operating company, nor any affiliate of a Bell operating company, may provide interLATA services except as provided in this section."

[101] 47 U.S.C. § 160(d) (emphasis added).

[102] *NPRM* at ¶75.